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AMENDMENT OFFERED BY MR. HENRY
TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 1524

Strike out subsection (b) of section 6 of the amendment
and insert in lieu thereof the following:

1 (b) COUNTERINTELLIGENCE PROGRAM EXEMPTION.--(1) Nothing
2 in this Act shall be construed to prohibit the
3 administration, in the performance of any counterintelligence
4 function, of any lie detector test that is conducted pursuant
5 to section 1221 of the Department of Defense Authorization
6 Act, 1986.

7 (2) Nothing in this Act shall be construed to prohibit
8 the administration, in the performance of any intelligence or
9 counterintelligence function, of any lie detector test--

10 (A) to an individual assigned or detailed to the
11 Central Intelligence Agency or to any expert or
12 consultant under a contract with the Central Intelligence
13 Agency;

14 (B) to (i) an individual employed by or assigned or
15 detailed to the National Security Agency, (ii) an expert
16 or consultant under contract to the National Security
17 Agency, (iii) an employee of a contractor of the National
18 Security Agency, or (iv) an individual applying for a
19 position in the National Security Agency; or

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1 (C) to an individual assigned to a space where
2 sensitive cryptologic information is produced, processed,
3 or stored for the Central Intelligence Agency or the
4 National Security Agency.

5 (c) EXEMPTION FOR FBI CONTRACTORS.--Nothing in this Act
6 shall be construed to prohibit the administration, in the
7 performance of any counterintelligence function, of any lie
8 detector test to an employee of a contractor of the Federal
9 Bureau of Investigation of the Department of Justice who is
- 10 engaged in the performance of any work under the contract
11 with such Bureau.

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1 AMENDMENT IN THE NATURE OF A SUBSTITUTE
2 TO H.R. 1524
3 OFFERED BY MR. WILLIAMS AND MR. MARTINEZ
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6 Strike out all after the enacting clause and insert in
7 lieu thereof the following:
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9 SECTION 1. SHORT TITLE.

10 This Act may be cited as the ``Employee Polygraph
11 Protection Act of 1985``.

12 SEC. 2. PROHIBITIONS ON LIE DETECTOR USE.

13 It shall be unlawful for any employer engaged in commerce
14 or in the production of goods for commerce--

15 (1) directly or indirectly, to require, request,
16 suggest, or cause any employee or prospective employee to
17 take or submit to any lie detector test;

18 (2) to use, accept, refer to, or inquire concerning
19 the results of any lie detector test of any employee or
20 prospective employee;

21 (3) to discharge, dismiss, discipline in any manner,
22 or deny employment or promotion to, or threaten to take
23 any such action against, any employee or prospective
24 employee who refuses, declines, or fails to take or
25 submit to any lie detector test or any employee or

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1 prospective employee on the basis of the results of any
2 lie detector test;

3 (4) to discharge or in any manner discriminate
4 against an employee or prospective employee because such
5 employee or prospective employee has filed any complaint
6 or instituted or caused to be instituted any proceeding
7 under or related to this Act or has testified or is about
8 to testify in any such proceeding or because of the
9 exercise by such employee, on behalf of himself or
10 others, of any right afforded by this Act.

11 SEC. 3. NOTICE OF PROTECTION.

12 The Secretary of Labor shall prepare, have printed, and
13 distribute a notice that employers are prohibited by this Act
14 from using a lie detector test on any employee or prospective
15 employee. Upon receipt by the employer, such notice shall be
16 posted at all times in conspicuous places upon the premises
17 of every employer engaged in commerce or in the production of
18 goods for commerce.

19 SEC. 4. AUTHORITY OF THE SECRETARY OF LABOR.

20 (a) IN GENERAL.--The Secretary of Labor shall--

21 (1) issue such rules and regulations as may be
22 necessary or appropriate for carrying out this Act;

23 (2) cooperate with regional, State, local, and other
24 agencies, and cooperate with and furnish technical
25 assistance to employers, labor organizations, and

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1 employment agencies to aid in effectuating the purposes
2 of this Act; and

3 (3) make investigations and inspections and require
4 the keeping of records necessary or appropriate for the
5 administration of this Act.

6 (b) SUBPENA AUTHORITY.--For the purpose of any hearing or
7 investigation under this Act, the Secretary shall have the
8 authority contained in sections 9 and 10 of the Federal Trade
9 Commission Act (15 U.S.C. 49, 50).

10 SEC. 5. ENFORCEMENT PROVISIONS.

11 (a) CIVIL PENALTIES.--(1) Subject to paragraph (2),
12 whoever violates this Act may be assessed a civil penalty of
13 not more than \$10,000.

14 (2) In determining the amount of any penalty under
15 paragraph (1), the Secretary shall take into account the
16 previous record of the person in terms of compliance with
17 this Act and the gravity of the violation.

18 (3) Any civil penalty assessed under this subsection
19 shall be collected in the same manner as is required by
20 subsections (b) through (e) of section 503 of the Migrant and
21 Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853)
22 with respect to civil penalties assessed under subsection (a)
23 of such section.

24 (b) INJUNCTIVE ACTIONS BY THE SECRETARY.--The Secretary
25 may bring an action to restrain violations of this Act. The

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1 district courts of the United States shall have jurisdiction,
2 for cause shown, to issue temporary or permanent restraining
3 orders and injunctions to require compliance with this Act.

4 (c) PRIVATE CIVIL ACTIONS.--(1) An employer who violates
5 the provisions of this Act shall be liable to the employee or
6 prospective employee affected by such violation. An employer
7 who violates the provisions of this Act shall be liable for
8 such legal or equitable relief as may be appropriate,
9 including without limitation employment, reinstatement,
10 promotion, and the payment of wages lost and an additional
11 amount as liquidated damages.

12 (2) An action to recover the liability prescribed in
13 paragraph (1) may be maintained against the employer in any
14 Federal or State court of competent jurisdiction by any one
15 or more employees for or in behalf of himself or themselves
16 and other employees similarly situated.

17 (3) The court shall award to a prevailing plaintiff in
18 any action under this subsection the reasonable costs of such
19 action, including attorneys' fees.

20 SEC. 6. EXEMPTIONS.

21 (a) NO APPLICATION TO GOVERNMENTAL EMPLOYERS.--The
22 provisions of this Act shall not apply with respect to the
23 United States Government, a State or local government, or any
24 political subdivision of a State or local government.

25 (b) COUNTERINTELLIGENCE PROGRAM EXEMPTION.--Nothing in

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1 this Act shall be construed to prohibit the performance of
2 any polygraph examination that is permitted by subsections
3 (a), (b), (d), and (e) of section 1221 of the Department of
4 Defense Authorization Act, 1986.

5 **SEC. 7. DEFINITIONS.**

6 As used in this Act--

7 (1) The term ``lie detector test`` includes any
8 examination involving the use of any polygraph,
9 deceptograph, voice stress analyzer, psychological stress
10 evaluator, or any other similar device (whether
11 mechanical, electrical, or chemical) which is used, or
12 the results of which are used, for the purpose of
13 detecting deception or verifying the truth of statements.

14 (2) The term ``employer`` includes any person acting
15 directly or indirectly in the interest of an employer in
16 relation to an employee or prospective employee.

17 (3) The term ``commerce`` has the meaning provided by
18 section 3(b) of the Fair Labor Standards Act (29 U.S.C.
19 203(b)).

20 **SEC. 8. EFFECTIVE DATE.**

21 The provisions of this Act shall take effect on the date
22 of enactment, except for section 3, which shall take effect
23 six months after the date of enactment.